

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**October 21, 2003**

**IN RE:**

**IMPLEMENTATION OF THE FEDERAL  
COMMUNICATIONS COMMISSION'S TRIENNIAL  
REVIEW ORDER – 90 DAY PROCEEDING**

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**DOCKET NO.  
03-00490**

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**ORDER APPROVING THE REPORT AND RECOMMENDATION  
OF HEARING OFFICER**

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This matter came before Director Pat Miller, Director Sara Kyle, and Director Ron Jones of the Tennessee Regulatory Authority (the "TRA" or "Authority"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on October 6, 2003, for consideration of the *Report and Recommendation of Hearing Officer* ("Report and Recommendation") filed on September 29, 2003, incorporated herein by reference and attached hereto as Exhibit A.

The Federal Communications Commission's ("FCC") Triennial Review Order ("TRO" or "Order") and its associated rules<sup>1</sup> were published in the Federal Register on September 2, 2003 and became effective on October 2, 2003. In the Order, the FCC found that telecommunications carriers are not impaired without access to unbundled local circuit switching employed for servicing customers using DS1 capacity and above<sup>2</sup> (enterprise switching) and gave State Commissions ninety (90) days from the effective date of the Order to petition the FCC for a waiver of this finding.<sup>3</sup> In so doing, the State Commission must make a showing of impairment to the FCC that complies with the criteria specified in the rules.<sup>4</sup>

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<sup>1</sup> 47 C.F.R. pt 51.

<sup>2</sup> 47 C.F.R. § 51.319(d)(3).

<sup>3</sup> 47 C.F.R. § 51.319(d)(5)(i).

<sup>4</sup> 47 C.F.R. § 51.319(d)(3)(i)(A) & (B).

For this purpose, the Hearing Officer issued a notice directing any party interested in seeking a waiver of the FCC's presumption of no impairment to file a petition with the TRA. As no such petitions were filed by the specified deadline, the Hearing Officer recommended that the TRA decline to continue with this 90-day proceeding and that this Docket be closed.

**The October 6, 2003 Authority Conference**

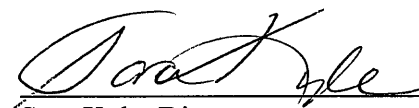
At the October 6, 2003 Authority Conference, the Panel voted unanimously to approve the *Report and Recommendation of Hearing Officer*.

**IT IS THEREFORE ORDERED THAT:**

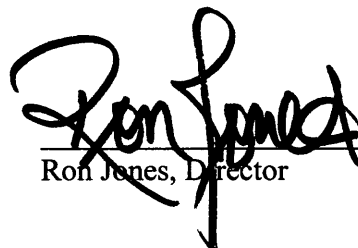
1. The *Report and Recommendation of the Hearing Officer* is hereby approved and is incorporated into this Order as if fully rewritten herein.
2. By approving the *Report and Recommendation*, the TRA has declined to seek a waiver of the FCC's presumption of no impairment for enterprise switching.
3. This Docket shall be closed fifteen days after entry of this Order.



Pat Miller, Director



Sara Kyle, Director



Ron Jones, Director

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**September 29, 2003**

**IN RE:**

**IMPLEMENTATION OF THE FEDERAL  
COMMUNICATIONS COMMISSION'S TRIENNIAL  
REVIEW ORDER - 90 DAY PROCEEDING**

**DOCKET NO.  
03-00490**

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**REPORT AND RECOMMENDATION  
OF HEARING OFFICER**

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This matter is before the Hearing Officer pursuant to the release of the Triennial Review Order ("TRO") by the Federal Communications Commission ("FCC") on August 21, 2003. The TRO and its associated rules<sup>1</sup> were published in the Federal Register on September 2, 2003 and, in the absence of a stay, will become effective on October 2, 2003. In the Order, the FCC found that telecommunications carriers are not impaired without access to unbundled local circuit switching employed for servicing customers using DS1 capacity and above<sup>2</sup> and gave State Commissions ninety (90) days from the effective date of the Order to petition the FCC for a waiver of this finding.<sup>3</sup> In so doing, the State Commission must make a showing of impairment to the FCC that complies with the criteria specified in the rules.<sup>4</sup>

For this purpose, the Hearing Officer issued a notice directing any party interested in seeking a waiver of the FCC's presumption of no impairment to file a petition with the TRA by no later than Friday, September 26, 2003. As no such petitions have been filed by the specified

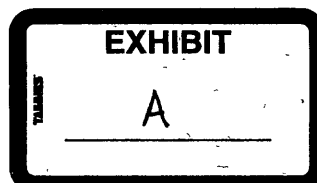
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<sup>1</sup> 47 CFR Part 51.

<sup>2</sup> 47 CFR 51.319(d)(3).

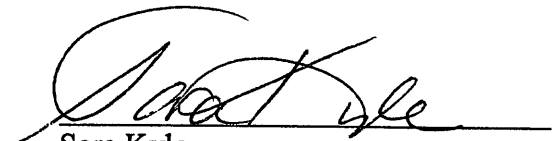
<sup>3</sup> 47 CFR 51.319(d)(5)(i).

<sup>4</sup> 47 CFR 51.319(d)(3)(i)(A) & (B).



deadline, it is recommended that the TRA decline to continue with this 90-day proceeding for the purpose of rebutting the presumption of no impairment for enterprise switching and that this Docket be closed. Adoption of this recommendation will in no way preclude the possibility of a subsequent proceeding in a new docket to consider waiver of this presumption of no impairment as allowed under 47 CFR 51.319(d)(5).

Respectfully submitted,



Sara Kyle  
as Hearing Officer